

REPRESENTATIVE FOR PETITIONERS: Stephen R. Snyder, Attorney

REPRESENTATIVE FOR RESPONDENT: Susan Engelberth, County Assessor

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

NORTHWEST WOODS, LLC. &	)	Petitions:	See attached
NORTHWEST WOODS RENTALS, LLC,	)		
	)	Parcels:	See attached
Petitioners,	)		
	)	County:	Kosciusko
v.	)		
	)	Township:	Plain
KOSCIUSKO COUNTY ASSESSOR,	)		
	)		
Respondent.	)	Assessment Year:	2015

---

Appeal from the Final Determinations of the  
Kosciusko County Property Tax Assessment Board of Appeals

---

**January 3, 2017**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

1. Did the Petitioner prove the subject properties 2015 assessments were incorrect?

**PROCEDURAL HISTORY**

2. Northwest Woods, LLC, and Northwest Woods Rentals, LLC, (Petitioners) timely filed 13 Petitions for Review of Assessments by Local Assessing Official (Form 130s) with

the Kosciusko County Assessor. The Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued decisions for each property denying the Petitioners relief. The Petitioners timely filed 13 Petitions for Review of Assessment (Form 131s) with the Board.

3. On October 4, 2016, the Board's designated administrative law judge, Patti Kindler (ALJ), held a consolidated hearing. Neither the Board nor the ALJ inspected the properties.

4. The following people were sworn and testified:

For the Petitioners:<sup>1</sup> Alan Collins, managing member for both entities,  
Karen Gehrke, director of property management.

For the Respondent: Susan Engelberth, Kosciusko County Assessor,  
Teena Pence, Kosciusko County Deputy Assessor,  
Darby L. Davis, commercial and industrial appraiser.

5. The Petitioners submitted the following exhibit:

Petitioners Exhibit 1: Income capitalization worksheet.

6. The Respondent submitted the following exhibits:

Respondent Exhibit A: List of exhibits,  
Respondent Exhibit B: Summary of testimony,  
Respondent Exhibit C: Cost approach valuation for the subject properties,  
Respondent Exhibit D: Sales comparison approach with subject property record cards;  
Respondent Exhibit E: Income approach to value and application of gross rent multiplier (GRM),  
Respondent Exhibit F: Summary and reconciliation of values,  
Respondent Exhibit G: Page 1 of DLGF Memorandum entitled *Gross Rent Multiplier (GRM) Income Approach to Value on Single-family and Small Multi-family Properties*,  
Respondent Exhibit H: Indiana Code § 6-1.1-4-39,  
Respondent Exhibit I: Aerial map of subject properties including sale dates and sale prices,

---

<sup>1</sup> The Petitioners' attorney, Stephen Snyder, was also sworn in.

- Respondent Exhibit J: Board's Final determination for *Michael R. & Nancy J. Hook vs. Union Twp. Ass'r*, Pet. Nos. 54-030-03-1-5-00001, et. al. (Ind. Bd. Tax Rev. February 9, 2006),
- Respondent Exhibit K: Form 130 for 4284 North Aspen Drive with income calculation and property record card,
- Respondent Exhibit L: Multiple Service Listing (MLS) sales sheet for 87 Sassafra,
- Respondent Exhibit M: MLS sales sheet for 514 North Harrison Street with property record card and Beacon property management sales data,
- Respondent Exhibit N: Property record cards for 228 Beechnut Court and 120 Cherry Street.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131s with attachments,
- Board Exhibit B: Hearing notices dated August 4, 2016,
- Board Exhibit C: Hearing sign-in sheet,
- Board Exhibit D: Waiver of 30-day hearing notice for pet. no. 43-017-15-1-5-00055-16, parcel no. 43-07-29-300-036.000-017, located at 87 Sassafra.<sup>2</sup>

8. The properties under appeal consist of 13 rental homes with various addresses located in Northwest Woods at the Crossing Subdivision in Warsaw.

#### **JURISDICTIONAL FRAMEWORK**

9. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **PETITIONERS' CONTENTIONS**

10. The subject properties' assessments are too high. The 13 rental properties were erroneously assessed as "owner-occupied homes." The homes were constructed for and

---

<sup>2</sup> This petition was not originally scheduled to be heard with the other parcels as the notice of hearing was mailed less than 30 days prior to the hearing. However, the parties agreed to waive the 30-day notice of hearing deadline and elected to include this petition in the above captioned consolidated hearing.

are used exclusively as rental properties. While the homes are situated on 13 separate parcels, they are collectively owned by Northwest Woods LLC, and Northwest Woods Rentals, LLC. The properties are “rental inventory maintained by the entities, acting as one landlord engaged in the rental business.” As the “2% circuit breaker cap was applied to the properties, there can be no dispute that the properties are not homesteads, which are capped at 1%.”<sup>3</sup> *Gehrke argument; Snyder argument.*

11. Here, the Assessor should have valued the properties by utilizing the income capitalization method as instructed by the International Association of Assessing Officials (IAAO), but she failed to do so. According to statute, the income capitalization approach applies to properties that have “more than four rental units.” It is never stated that the “units must be attached units.” Furthermore, the statute “merely says” the gross rent multiplier (GRM) method is the “preferred method, not the only method” to value rental properties with less than five units. *Snyder argument (referencing Ind. Code § 6-1.1-4-39; and citing Eckerling v. Wayne Twp. Ass’r, 841 N.E.2d 674 (Ind. Tax Ct. 2006)).*
12. The Petitioners have “made available” sufficient evidence to determine the appropriate value using the income capitalization approach to value. As prior case law states:

[W]hatever approach is utilized, the Manual provides that the goal or end result should be the same to ascertain the property’s market value in use. Consequently while all three approaches when properly processed should produce approximately the same estimate of value, situations may arise that are not explained or that result in assessments that may be inconsistent with the definition of market value-in- use. In those cases, the Assessor shall be expected to adjust the assessment to comply with this definition and may consider additional factors to accomplish that adjustment.

*Snyder argument (citing Eckerling, 841 N.E.2d at 678 (Ind. Tax Ct. 2006)).*

---

<sup>3</sup> The Board assumes the Petitioners were referring to tax credits under Ind. § Code 6-1.1-20.6-7.5, these are sometimes referred to as “tax caps.”

13. In an attempt to prove more accurate assessments, Ms. Gehrke prepared a calculation for each property by utilizing the IAAO's format for determining value for income producing properties. The capitalization rates utilized were based upon "the expenses incurred, their mortgages and current market conditions." Additionally, the figures presented in the calculations were "the market for these properties." Ultimately, the calculation yielded significantly lower values than the current assessments. *Gehrke testimony; Pet'rs Ex. 1.*
14. Finally, the Respondent's argument is flawed. The Respondent has attempted to support her position by pointing to prior Board decisions. However, the Respondent "framed her argument around the assessor's contentions rather than the Board's holding." In the decision referenced by the Respondent, "the Board did not hold that the income capitalization method was inapplicable to the property, but only that the petitioner failed to provide sufficient evidence." *Snyder argument (referencing Resp't Ex. J).*

#### **RESPONDENT'S CONTENTIONS**

15. The properties are correctly assessed. The properties were assessed utilizing the cost approach and the sales-comparison approach. The Respondent "lacked any rental income data for new houses as of March 1, 2015." Nevertheless, the income capitalization approach is not the proper method to value single-family rental properties. According to statute, this approach is used to value four or more rental units. The GRM is the preferred method for valuing single-family rental properties. *Engelberth argument (referencing Ind. Code § 6-1.1-4-39); Resp't Ex. G, H, J.*
16. In any event, the Petitioners' income capitalization calculations are flawed. Ms. Gehrke relied on the properties' specific income, expenses, and mortgage rates rather than deriving that information from the market. Furthermore, no miscellaneous income was reported by the Petitioners for items such as pet allowances or appliance rental. *Engelberth argument (referencing Pet'rs Ex. 1); Resp't Ex. K.*
17. Further, as stated in prior Board decisions, when properly processed, the three generally recognized valuation methods should produce approximately the same estimate of value.

To illustrate that point, the Respondent estimated the market value for the properties using both the sales-comparison approach and the income approach. She then compared the resulting values from these approaches to the current assessments. The comparison illustrates “the assessments are within 5% of the average sales and income valuations, and well within the 10% range allowed by state guidelines.” *Engelberth argument; Resp’t Ex. B, C, D, E, F, J.*

18. Several homes located in the same subdivision as the subject properties sold in 2014 and 2015. These sales were used in neighborhood sales trending, but they were not rentals, so they could not be used to develop an accurate GRM for 2015. For instance, the property located at 231 Beechnut Court sold in 2014 for \$162,500. This property was assessed at \$161,200 in 2015. Another property, located at 143 Cherry Street sold in 2014 for \$157,500. This property was assessed at \$169,900 in 2015. These sales illustrate that assessments are in line with market values. *Engelberth argument; Resp’t Ex. D.*
19. One of the properties under appeal, the home located at 87 Sassafras Court, sold after the March 1, 2015, assessment date. This is noteworthy because the property sold for \$172,500 on April 11, 2016. This amount is “substantially higher” than the \$107,700 value requested by the Petitioners. *Engelberth testimony; Resp’t Ex. L.*
20. The Petitioners allude to the fact the Respondent applied certain “tax caps” to the properties. The Respondent does not determine tax caps. The Respondent sent “the values went to the Auditor’s Office with a 1% cap, and the Auditor changed them to 2%.” Thus, there is no discrepancy on the Respondent’s part with regard to the assessment methodology and the tax caps. *Engelberth argument.*

### **BURDEN OF PROOF**

21. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax*

*Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

22. First, Ind. Code. § 6-1.1-15-17.2 “applies to any review of appeal of an assessment under this chapter if that assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
23. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
24. There is no dispute the assessments increased by more than 5% between 2014 and 2015; however, the parties agree the homes were not built until after March 1, 2014. Structural improvements were considered in the 2015 assessments that were not considered in 2014. Under the plain language of Ind. Code § 6-1.1-15-17.2, the burden shifts to an assessor when the assessed value of the *same property* increases by more than 5%. In this case, what was assessed was not the *same property* for purposes of the burden shifting statute because the homes were assessed in 2015, but not in 2014. Accordingly, the burden of proof remains with the Petitioners.

## ANALYSIS

25. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
26. Regardless of the valuation method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
27. There is a separate statute, however, regarding the valuation of certain rental properties such as the properties at issue here. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the GRM “is the preferred method for valuing...real property that has at least one (1) and not more than four (4) rental units...”
28. Here, the parties’ overriding argument concerns the methodology used to compute the assessments. The Respondent, due to lack of data, did not use any methodology related to income, even though the properties are income producing. The Petitioners argue that they have now provided the accurate data to properly utilize the income capitalization approach, so the Respondent must now correct the assessments. The Respondent, however, argued that the GRM method, not the income capitalization method, is the only applicable method.
29. Because the GRM method is described only as the “preferred method,” rather than mandatory, the statute contemplates circumstances in which the GRM method should be

disregarded. Consequently, the question the Board must address is not one of methodology, but whether the Petitioners established the current assessments are incorrect and that their income capitalization method resulted in an accurate market value-in-use for the properties. And for the reasons that follow, the Board finds the Petitioners failed to do so.

30. In valuing a property under the income approach, it is appropriate to consider the historic and projected income and expense data of the property in question. It is also important to consider data from other comparable properties in order to make accurate, realistic projections about the income stream a property should be expected to produce. Where the income and expense data for the subject property is not consistent with what the market data shows, generally accepted appraisal principles require further examination and analysis. For example, considering both actual and market income and expenses helps to protect against distortions and inaccurate value estimates that might be caused by extraneous factors such as bad management or poor business decisions. *See Indiana MHC, LLC v. Scott Co. Ass'r*, 987 N.E.2d 1182, 1186 (Ind. Tax Ct. 2013). Here, the Petitioners' analysis failed to consider other comparable properties. The analysis only considered the various properties currently under appeal. Also, as the analysis was not completed by a certified appraiser, the only indication given by Ms. Gehrke that generally accepted appraisal principles were followed was her statement that it was completed "by utilizing the IAAO's format for determining value." This statement by itself is not enough to convince the Board the analysis complies with generally accepted appraisal principles. Therefore, the analysis lacks relevant market data and in turn lacks probative value.
31. Additionally, the Petitioners' capitalization rate also lacks market support. Ms. Gehrke testified that the capitalization rate was based on "actual expenses, mortgages incurred, and current market conditions." But she failed to establish that the expenses she utilized were typical for new rental homes such as the subject properties. She also failed to establish how "current market conditions" impacted her capitalization rate. Contrary to the Petitioners' argument, values that represent "the market for these properties" are not

market figures, but property-specific figures. Thus, the Board is unable to determine if the calculations are representative of the local market.

32. Finally, the Petitioners raised an argument regarding “tax caps.” Indiana Code § 6-1.1-20.6-7.5 addresses the calculation of the tax credits:

(a) A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:

- (1) homestead exceeds one percent (1%);
- (2) residential property exceeds two percent (2%);
- (3) long term care property exceeds two percent (2%);
- (4) agricultural land exceeds two percent (2%);
- (5) nonresidential real property exceeds three percent (3%); or,
- (6) personal property exceeds three percent (3%);

of the gross assessed value of the property that is the basis for the determination of property taxes for that calendar year.

33. The Board infers the Petitioners raised this issue to argue that the Respondent recognized the subject properties are rental properties, and not owner-occupied homesteads, because the 2% tax cap was applied. The fact that the Auditor actually applies the tax caps is insignificant to the Petitioners’ claim. There was no dispute that the properties are rental properties. To the extent that the Petitioners claim the tax caps are wrong or incorrectly applied, they failed to make a prima facie case.

34. Consequently, the Petitioners failed to make a prima facie case that the 2015 assessments were incorrect. Where the Petitioners have not supported their claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

**SUMMARY OF FINAL DETERMINATION**

35. The Petitioners failed to make a prima facie case. The Board finds for the Respondent. No change will be made to the 2015 assessments.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.